IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

WP(C).No. 16930 of 2007(M)

PETITIONER:

M/S.BHARTI TELEVENTURE LTD., SAHODARAN AYYAPPAN ROAD, KADAVANTHRE, KOCHI-682 020, PRESENTLY M/S.BHARTI AIRTEL LIMITED, MARADU JUNCTION, KUNDANNUR, N.H.BYPASS, ERNAKULAM REPRESENTED BY ITS SENIOR MANAGER (LEGAL).

BY ADV. SRI.SATHISH NINAN
SRI.SANTHOSH MATHEW

RESPONDENTS:

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1. MRS.SEENA AKBAR, W/O.HAMEED AKBAR, STAR GARDEN, CHETTICHIRA ROAD, KARANAKKODAM, KOCHI-682 019.

2. P.B.BAKKER, S/O.MOIDEEN PILLAI, PALLIPARAMBIL HOUSE, PADAMUGAL, KAKKANAD, KOCHI-682 030.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

WP(C)No.16930 OF 2007 M

Dated this the 4th June, 2007.

JUDGMENT

This writ petition is filed seeking a direction to the Munsiff, Ernakulam to dispose of I.A.2307/2006 in O.S.319/06 within a time frame and to set aside the order passed on 28.2.2007 refusing to hear the maintainability of the case as a preliminary issue. Against that a review petition was filed and that is also dismissed. So far as the first prayer is concerned Order XXXIX Rule 3 CPC mandates that as far as possible when an injunction is granted the court has to hear it within thirty days and pronounce an order. I am informed that counter is already filed in the interim application. So there is force in the contention of the learned counsel for the writ petitioner to give a direction to dispose of the interim injunction application on merits. So far as the second point is concerned this court has now held that after the amendment of the CPC, consideration of a preliminary issue has become a discretionary relief and if question of law and facts are involved in a case the court may not be in a position to dispose it of as a preliminary issue. Question of preliminary issue arises only when there is question of law involved. Further, I am informed that the first order

which was sought to be reviewed was an order passed on consent as well. So far as consent is concerned it is now settled principle that the matter has to go before the same court and when the court has expressed its opinion that consent is given then much cannot be done thereafter. Therefore, the writ petition is disposed of directing the learned I Additional Munsiff, Ernakulam to dispose of I.A.2307/06 in O.S.319/06 within a period of four weeks from today.

The Registry is directed to send a copy of this judgment to the I Additional Munsiff, Ernakulam for compliance.

M.N.KRISHNAN
Judge

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